

Section 1: 8-K (FORM 8-K)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT PURSUANT TO SECTION 13 OR 15(d) OF

THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): May 18, 2020

NICOLET BANKSHARES, INC.

(Exact name of registrant as specified in its charter)

Wisconsin

(State or other jurisdiction of
incorporation or organization)

001-37700

(Commission
File Number)

47-0871001

(IRS Employer
Identification No.)

111 North Washington Street

Green Bay, Wisconsin 54301

(Address of principal executive offices)

(920) 430-1400

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common stock, par value \$0.01 per share	NCBS	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter.)

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.02 Termination of a Material Definitive Agreement.

As previously discussed, Nicolet Bankshares, Inc. (“Nicolet”) and Commerce Financial Holdings, Inc. (“Commerce”) entered into an Agreement and Plan of Merger, dated February 17, 2020 (the “Merger Agreement”). On May 18, 2020, Nicolet and Commerce entered into a mutual agreement to terminate the Merger Agreement (the “Termination of Merger Agreement”). Pursuant to the Termination of Merger Agreement, the Merger Agreement was terminated. The summary of the Termination of Merger Agreement set forth under this Item 1.02 is qualified in its entirety by reference to the complete terms and conditions of the Termination of Merger Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On May 18, 2020, Nicolet and Commerce issued a joint press release announcing the termination of the Merger Agreement, a copy of which is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
10.1	<u>Termination of Merger Agreement between Nicolet Bankshares, Inc. and Commerce Financial Holdings, Inc., dated May 18, 2020</u>
99.1	<u>Joint Press Release, dated May 18, 2020</u>

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: May 18, 2020

NICOLET BANKSHARES, INC.

By: /s/ Ann K. Lawson
Name: Ann K. Lawson
Title: Chief Financial Officer

[\(Back To Top\)](#)

Section 2: EX-10.1 (EXHIBIT 10.1)

**EXHIBIT
10.1**

TERMINATION OF MERGER AGREEMENT

This TERMINATION OF MERGER AGREEMENT (this “**Agreement**”) dated May 18, 2020, is between Nicolet Bankshares, Inc., a Wisconsin corporation (“**Nicolet**”), and Commerce Financial Holdings, Inc., a Wisconsin corporation (the “**Company**”).

RECITALS

A. Nicolet and the Company are parties to an Agreement and Plan of Merger dated as of February 17, 2020 (the “**Merger Agreement**”). Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in the Merger Agreement.

B. Pursuant to the Merger Agreement, if the Nicolet Common Stock Price is below \$62.00 per share at the time set for Closing, either party may have the right to terminate the Merger Agreement. Nicolet has indicated that, in such circumstances, it intended to exercise its right to terminate the Merger Agreement.

C. Triggered by the COVID-19 pandemic and widespread business shutdowns that were mandated to control the spread of the virus, the U.S. economy and other major economies throughout the world have moved into recession, and stock prices for most publicly traded companies have dropped significantly. The stock price for Nicolet common stock has fallen more than 30% since the Merger Agreement was signed and has not traded at or above \$62.00 for more than two months.

D. The parties believe it is unlikely the Nicolet Common Stock Price will reach \$62.00 within the time provided in the Merger Agreement, expected to be mid-summer, and that it is unlikely that the Merger will close based on Nicolet’s intention to terminate in such circumstances.

E. Rather than continuing to pursue and plan for a transaction that is unlikely to close, the parties believe it is in the best interest of their respective shareholders, customers and employees to mutually agree to terminate the Merger Agreement to enable them to focus more efforts on addressing the impacts of the pandemic on their businesses and customers.

F. To assist the Company in addressing the costs and negative impact of having entered into the Merger Agreement, Nicolet has agreed to make certain payments to the Company as provided in this Agreement.

AGREEMENTS

In consideration of the recitals and the following mutual promises, covenants and agreements, the parties agree as follows:

1. Mutual Termination.

(a) Pursuant to section 10.1(a) of the Merger Agreement, Nicolet and the Company agree to terminate the Merger Agreement, effective immediately.

(b) As provided in section 10.2 of the Merger Agreement, notwithstanding termination, the Confidentiality Agreement and the provisions contained in sections 10.2, 10.3 and Article 11 of the Merger Agreement shall survive this termination.

2. Payments and Transfers. On execution and delivery of this Agreement by the parties, Nicolet shall:

(a) pay to the Company by wire transfer of immediately available funds to an account specified by the Company a lump sum payment in the amount of Five Hundred Thousand Dollars and no cents (\$500,000.00); and

(b) transfer and deliver to the Company 4,000 shares of the Company's \$0.01 par value common stock registered in Nicolet's name and represented by certificate number 374, duly endorsed for transfer or accompanied by an executed stock power.

3. Publicity. Nicolet and the Company agree to the joint press release announcing the execution and delivery of this Agreement in the form attached to this Agreement as Exhibit A (the "Agreed Statement"). Neither the Company nor Nicolet shall issue or cause the publication of any other press release or other public announcement or public statement regarding this Agreement, or the discussions between them or their counsel leading to its execution, that are inconsistent with the Agreed Statement in any material way, except to the extent required by applicable Legal Requirements or Nasdaq Rules.

4. Release. Each of Nicolet and the Company hereby unconditionally and irrevocably acquits, remises, releases and forever discharges the other party, their affiliates, and their respective present, future or former officers, directors, employees, affiliates, agents, shareholders, members, partners, advisors and representatives, and their respective successors and assigns of and from any and all claims, losses, liabilities, demands and causes of action of any kind whatsoever arising under the Merger Agreement.

5. No Breach. The parties acknowledge that neither Nicolet nor the Company has breached an obligation under the Merger Agreement.

6. Cooperation and Further Assurances. The parties agree to cooperate in withdrawing or terminating, as appropriate, all filings made with applicable regulatory authorities in connection with the transactions contemplated by the Merger Agreement and to take such acts and execute such documents as the other party may reasonably request to carry out the intent of this Agreement.

7. Miscellaneous.

(a) This Agreement may be executed in any number of counterparts (including by electronic means), each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other party, it being understood that each party need not sign the same counterpart.

(b) All questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal laws of the State of Wisconsin applicable to Contracts made and wholly to be performed in such state without regard to conflicts of laws.

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[SIGNATURE PAGE FOLLOWS]

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FOR IMMEDIATE RELEASE

Termination of Merger Agreement

GREEN BAY, WI, May 18, 2020 - As previously reported, on February 17, 2020, Nicolet Bankshares, Inc. (NASDAQ: NCBS) (“Nicolet”) and Commerce Financial Holdings, Inc. (“Commerce”) entered into a definitive merger agreement (“Merger Agreement”), pursuant to which Nicolet would acquire Commerce and its wholly-owned banking subsidiary, Commerce State Bank (“Commerce Bank”). For the reasons and on the terms set forth below, on May 18, 2020, Nicolet and Commerce mutually agreed to terminate the Merger Agreement.

Pursuant to the Merger Agreement, if the Nicolet Common Stock Price, as defined in the Merger Agreement, is below \$62.00 per share at the time set for Closing, either party may have the right to terminate the Merger Agreement. Nicolet has indicated that, in such circumstances, it intended to exercise its right to terminate the Merger Agreement.

Triggered by the COVID-19 pandemic and widespread business shutdowns that were mandated to control the spread of the virus, the U.S. economy and other major economies throughout the world have moved into recession, and stock prices for most publicly traded companies have dropped significantly. The stock price for Nicolet common stock has fallen more than 30% since the Merger Agreement was signed and has not traded at or above \$62.00 per share for more than two months.

The parties believe it is unlikely the Nicolet Common Stock Price will reach \$62.00 per share within the time provided in the Merger Agreement, expected to be mid-summer, and that it is unlikely that the Merger will close based on Nicolet’s intention to terminate in such circumstances.

Rather than continuing to pursue and plan for a transaction that is unlikely to close, the parties believe it is in the best interests of their respective shareholders, customers and employees to mutually agree to terminate the Merger Agreement which will enable them to focus more on addressing the impacts of the pandemic on their businesses and customers.

To assist Commerce in addressing the costs incurred by having entered into the Merger Agreement, Nicolet has agreed pay Commerce \$500,000.00 and surrender 4,000 shares of Commerce common stock currently held by Nicolet.

About Nicolet Bankshares, Inc.

Nicolet Bankshares, Inc. is the bank holding company of Nicolet National Bank, a growing, full-service, community bank providing services ranging from commercial and consumer banking to wealth management and retirement plan services. Founded in Green Bay in 2000, Nicolet National Bank operates branches in Northeast and Central Wisconsin and the upper peninsula of Michigan. More information can be found at www.nicoletbank.com.

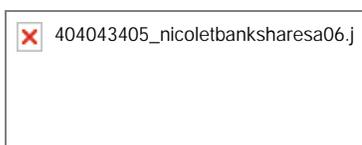
About Commerce Financial Holdings, Inc.

Commerce Financial Holdings, Inc. is the bank holding company of Commerce State Bank. Opened in August 2005, Commerce State Bank is a full-service, state-chartered bank headquartered in West Bend with additional offices in Cedarburg, Elm Grove and Sheboygan. Today, the bank has total assets of \$729 million, making it the 32nd largest bank in the State of Wisconsin. Commerce State Bank is dedicated to helping communities through its Random Acts of Commerce program.

[\(Back To Top\)](#)

Section 3: EX-99.1 (EXHIBIT 99.1)

EXHIBIT 99.1



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[\(Back To Top\)](#)